

HIGH COURT of CHHATTISGARH, BILASPUR

Judgment reserved on 23.09.2019

Judgment pronounced on 30.09.2019

WA No. 427 of 2019

(Arising out of order dated 21.08.2019 in WPS- 2641 of 2019)

1. Vijay Chandrawanshi, S/o Nathuni Chandrawanshi, aged about 53 Years, Occupation Auto Driver
 2. Ku. Sonali Chandrawanshi, D/o Vijay Chandrawanshi, aged about 15 years represented through her father ie Petitioner No.1
- Both R/o Village Jhabar, Near College Post Thana Dipika, District : Korba, Chhattisgarh

---- Appellants

Versus

1. State of Chhattisgarh Through The Secretary, Department of Home Affairs (Police), New Raipur Mantralaya Bhawan, Thana Naya Raipur, Tahsil And District- Raipur, Chhattisgarh
2. The Superintendent of Police, District Korba, Chhattisgarh
3. The Station House Officer, Police Civil Lines Bilaspur, Tahsil Bilaspur, Chhattisgarh

-----Respondents

For Appellants	: Shri NK Malviya, Advocate
For Respondents/State	: Shri Sidharth Dubey, Deputy GA

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
CAV Judgment

Per Parth Prateem Sahu, J.

1. Appellant-1 is father of appellant-2. The appellants have filed this appeal challenging the impugned order dated 21.08.2019 whereby learned Single Judge dismissed their WPC-2641 of 2019 seeking relief of permission for termination of pregnancy of appellant-2.
2. Brief facts relevant for disposal of this appeal are that appellant-2 was kidnapped from lawful guardianship of her parents on 20.06.2018.

Missing report was lodged at concerned Police Station and offence punishable under Section 363 of IPC was registered. The missing girl was recovered on 31.05.2019 from village Parna, district Kishtwad, Jammu and Kashmir and was sent for medical examination. On medical examination it was revealed that the girl was carrying pregnancy of 3 ½ months as pleaded by the appellants in Writ Petition. Looking to the girl being minor, her father made an application before the Civil Surgeon, District Hospital Korba for termination of her pregnancy. Looking to the legal impediment, he was advised to take appropriate orders from the authorities concerned by taking legal remedy which made the appellants to file Writ Petition before the High Court.

3. The Writ Petition was filed on 27.07.2019 with the following reliefs:

- “a. The Hon'ble Court may kindly be pleased allow the instant Writ Petition and permit the petitioner No.2 for termination of the pregnancy which she is carrying as early as possible.
- b. Further may kindly be pleased to issue appropriate directions to the Respondents for termination of pregnancy.
- c. Any other relief, order/direction may be pleased to issue in the facts and circumstances of the case including imposing costs.”

4. When the matter came up for hearing, it was directed for medical examination of appellant-2 by Medical Board and the same was submitted by learned counsel for the respondents. As per medical examination report dated 13.08.2019, there is mention of pregnancy of 20 weeks. Other medical documents were also placed on record. Learned Single Judge considered the medical report mentioning the length of pregnancy

more than 20 weeks; its termination may lead to severe bleeding and also may prove to be fatal to life of appellant-2; as also other provisions of Medical Termination of Pregnancy Act, 1971 (for short, '1971 Act'). Learned Single Judge also took note of submission made by appellant-2 recorded under Section 164 of the Cr.P.C., further the radiological report for asserting the age of appellant-2, and dismissed the Writ Petition on 21.08.2019.

5. Learned counsel for the appellants submits that as appellant- 2 was subjected to rape and offences punishable under Sections 363, 366 and 376 of IPC & Sections 4 and 5 of POCSO (Protection of Children from Sexual Offences Act) were registered against one Gautam Kashyap along with whom appellant-2 eloped. He further submits that as the pregnancy is on account of rape committed on her, therefore, considering the explanation-1 provided under sub-Section 2 of Section 3 of 1971 Act, prayer for termination of pregnancy be allowed.

6. Per contra, learned counsel for respondents/State submits that Section 3(2)(b) provides for granting permission could have been exercised only when length of pregnancy does not exceed 20 weeks and at present considering the pleading made in the Writ Petition as well as the medical report of appellant-2, length of pregnancy of appellant-2 appears to be more than 20 weeks and at this stage, there will be danger and threat to life of appellant- 2.

7. We have heard learned counsel for the parties and also perused the impugned judgment passed by learned Single Judge and considered the provisions of the 1971 Act, particularly, the provisions of Section 3.

8. Provision of Section 3(2)(b) of 1971 Act provides for the termination of pregnancy not exceeding 20 weeks (under prescribed circumstances). Looking to the medical report, by today, fetus has developed to baby. At this advance stage of pregnancy, there will be danger to the life of appellant-2 also. Under the 1971 Act, legislature has used the word “not exceeding twenty weeks” with purpose. The bar imposed under Section 3(2) can be made exception only in one circumstance that is to save the life of a pregnant woman. In the case at hand, there is no such medical report, in fact, it is otherwise that the process of termination of pregnancy will be endanger to the life of appellant-2.

9. Considering the overall facts and circumstances of the case, particularly the fact that as on date, the length of pregnancy of appellant-2 is more than 24 weeks, we are not inclined to allow this appeal.

10. The appeal being devoid of any substance, it is liable to be and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge